

This letter discusses the various tax liabilities for wireless enhanced services. See 86 Ill. Adm. Code 495.100(c). (This is a GIL.)

June 1, 2005

Dear Xxxxx:

This letter is in response to your letter dated September 20, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Introduction:

ABC, a provider of tax compliance software to the telecommunications industry, is currently researching the taxability implications of a popular set of products known as 'wireless enhanced services.' These products can also be characterized as *peripheral-type* services to which wireless customers subscribe. Examples of such services include cellular ring tones, digitized music, text messaging and video games.

These services may be subscribed to on a monthly basis or may be 'purchased' on a one-time *per-usage* basis. Consumers may also acquire a permanent copy of the product (for example, a song, movie or video game) by 'downloading' it directly onto their cellular phone. Given the diverse choice of peripheral services available to cellular subscribers, we pose the following questions to your department.

(Note: For purposes of this query letter we are asking whether the transactions listed below are subject to **Illinois Telecommunications [Gross Receipts] Excise Tax** liability.)

Questions:

1 – Are **wireless enhanced services** taxed in exactly the same way as cellular services are taxed, or must the taxability of each type of *enhanced service* be determined separately?

2 – Is the sale of **ring tones** (melodies that announce incoming calls) subject to taxation? (Please explain. For example, are ring tones treated as a *vertical feature* that serve to enhance cellular service?)

3 – Are charges for **info alerts** (digitally displayed information like weather data, stock prices, sports scores and movie listings that are sent to a subscriber's cell phone) taxable? (Please explain. For example, are info alerts classified as *information services* and taxed in the same way?)

4 – Are charges for one-time access to, or downloading of, **digitized music** onto a cellular phone taxable? (Please explain. Do such transactions share the taxability status of *entertainment services*, for example?)

5 – Are charges to download **video games** onto a cellular phone taxable? Is the taxation of such transactions comparable to that for licensing or sale of *computer software*?

6 – Are charges for **text messaging services** that allow users to send and receive concise word messages through their cellular phone taxable? (Please elaborate.)

Please provide us with a written response to the above set of questions. Your reply will help us program our database to reflect the taxability status of wireless enhanced services in your state. If you wish, you may fax your response to our office. Thank you in advance for your timely response.

DEPARTMENT'S RESPONSE:

The Department is without sufficient information to determine the tax liabilities of the peripheral service items referred to in your letter. In order to make a determination of the tax liabilities, the Department would need specific information on how the peripheral services such as ring tones, info alerts, digitized music, video games, and text messaging services, operate; and the manner in which each item is billed to the customer.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495. "Telecommunications", in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities. See 35 ILCS 630/2(c).

"Telecommunications" does not include "charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content" or "value-added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission." See 35 ILCS 630/2(a) and 2(c). If telecommunications retailers provide both such services and also transmission

services, the charges for each must be disaggregated and separately stated from telecommunications charges in the books and records of the retailers. If these charges are not thus disaggregated, the entire charge is taxable as a sale of telecommunications.

Information regarding the taxation of computer software may be found under the Department's regulations at 86 Ill. Adm. Code 130.1935. Canned software is considered to be tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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